

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re BENTLEY G. et al., Persons Coming
Under the Juvenile Court Law.

B213316
(Los Angeles County
Super. Ct. No. CK08009)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JENNIFER L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jennifer L. appeals from the order of the juvenile court that terminated her parental rights to Bentley G. (age 6) and J. K. (age 4). She contends that the juvenile court erred in finding that the parent-relationship exception to adoption found in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i)¹ did not apply. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On March 23, 2009, we issued an unpublished decision in mother's prior appeal (B209430). Our opinion in mother's second appeal (B210869) is being filed concurrently with this opinion. We take judicial notice of those two opinions.

1. Family history

Mother has used methamphetamines since she was an adolescent. She has a long history of undergoing drug treatment and then relapsing. Between April 2005 and May 2006, mother and the children were in at least five treatment facilities. When the three were not in a facility, they were homeless. The child abuse hotline has received three telephone calls about Bentley and J. Mother also has an extensive criminal history.

In January 2007, after the three were found inside a stolen car, the Department of Children and Family Services (the Department) detained the children. Mother was taken into custody where she remained until March 2007. The juvenile court sustained a petition alleging mother's substance abuse and incarceration, and declared Bentley and J. dependents of the court. The court removed the children from mother's custody and granted mother monitored visits and reunification services.

2. Mother's visits with the children are sporadic and reunification services are terminated.

Mother visited the children beginning in March 2007. But the continuity of her visits was interrupted when mother was incarcerated. She regularly visited the children between July 2007 and September 2007. Then, after violating probation, mother moved

¹ All further statutory references are to the Welfare and Institutions Code.

to Missouri in September 2007. Before leaving, at the September 5, 2007 visit, mother told the children that this would be her last. She gave them a picture of herself with a note on the back indicating that she would never forget them. Rather than to cry upon mother's departure, the children ran to their foster mother. The foster father indicated that mother had promised to drop her claim to the children if the foster parents allowed her to be a part of the children's lives by sending them pictures, attending parties, and telephoning on birthdays. She told the foster father she would "let [the children] be" because they were in a stable and loving home.

In September 2007, the court terminated reunification and set the matter for a section 366.26 hearing.

3. While mother is in Missouri, the children's behavior improves.

The children have serious behavioral problems that have caused them to be removed from two of their four or five different foster care placements. For example, they were placed in a prospective adoptive home in August 2007 and then removed in November 2007 when their behavior had deteriorated following a visit with mother. Bentley threw temper tantrums, lasting as long as an hour. He has a history of biting children, including J. He tried to choke J. twice. Bentley lacked basic educational and socialization skills. He threatened to kill a teacher and slapped her. J. is anxious.

In January 2008, Bentley told his social worker that his "mommy Jennifer" was dead because she came and told him so.

In February 2008, the children were placed in a foster home where they have remained. According to this caregiver, when the children arrived, Bentley was very angry and hurt, and he often repeated mother's name. In this foster home, the children finally began to stabilize and bond with their caregiver. This caregiver has assured that the children attend counseling and that Bentley regularly takes his psychotropic medication. By April 2008, the caregiver reported "no concerns at this time." In July 2008, the social worker described the children as "blossoming," noting they had become more verbal, were able to follow directions well, participated in activities, and were less aggressive. Bentley attended therapy regularly and saw a psychiatrist monthly. The

children called their caretaker “mommy.” Bentley had improved to the point where he would move from intensive day treatment to a regular classroom in the fall and rather than ask to have the children removed, the caretaker had decided to adopt them.

4. Mother returns to California and visits resume.

Mother returned from Missouri and was arrested in April 2008. Mother’s criminal sentence had been extended to May 2008 and her probation extended to February 2010. She was released to a criminal-court-ordered lock-down facility operated by the Family Foundations Program.

Mother had not seen the children since September 2007 when she left California. The juvenile court granted mother monitored visits in May 2008, and so her visits, which had ceased after September 5, 2007, resumed on June 10, 2008, nine months later. Between May and July 9, 2008, mother had four weekly, monitored visits with the children.

Once visits resumed, Bentley’s behavior deteriorated. When he returned from visits with mother, he was upset and would hit his head on the wall, once breaking his glasses. He would hold on to and repeat what mother told him during the visit, i.e., that he would be living with her in the treatment facility.

In June 2008, mother filed a section 388 petition seeking to have the children placed with her in her treatment program at Family Foundations. Mother was scheduled to be released in a year but, if the children were not placed with her in the program, mother would be forced to leave and finish her sentence in jail. In support of her petition, mother submitted letters showing that she and the children had developed a close relationship and were bonded. Rejecting the conclusions in those letters, the juvenile court denied mother’s section 388 petition. We affirmed that order in the first appeal.

5. The juvenile court suspends visitation.

In July 2008, the children’s counsel asked the court to suspend its previous order authorizing visits because the children’s behavior was regressing after contact with mother. The court observed that mother was having regular visits because the children were being brought to her, but that “[i]f she wasn’t confined, the history is that she

wouldn't initiate her visits." The court then ordered that the children not have visits with mother because mother had not visited the children once between September 2007 and the spring of 2008, when her visits were arranged. The court also noted, given mother's rights were scheduled to be terminated soon, that it would not be in the children's interest to attempt to build a relationship with mother for such a short period. In our opinion filed concurrently herewith, we affirm the order suspending visits.

In July 2008, mother was removed from her residential treatment program at Family Foundations and returned to state prison and has had no visits with the children since.

At the selection and implementation hearing (§ 366.26), mother argued that the juvenile court should consider her relationship with the children and the reports that her visits with them were positive. The Department and the children's attorney argued the children were adoptable and that the court should terminate parental rights. Finding by clear and convincing evidence that the children were adoptable, the court terminated mother's parental rights but stayed the order pending finalization of the home study. In December 2008, after the homestudy was approved, the court lifted its stay and designated the caretaker as the children's prospective adoptive parent. Mother filed her notice of appeal.

CONTENTION

Mother challenges the order terminating her parental rights.

DISCUSSION

The Legislature has declared that the juvenile court *must* select adoption as the permanent plan if it finds that a child may not be returned to his or her parent and is likely to be adopted. However, "the Legislature has recognized that in some circumstances a plan other than adoption may be appropriate and in the child's best interests. [Citation.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) Thus, the court may choose a plan other than adoption, such as long-term foster care or guardianship, if it concludes that termination of parental rights would be detrimental to

the child because one of five exceptions exists. (§ 366.26, subd. (c)(1); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574.)

Subdivision (c)(1)(B)(i) of section 366.26 sets forth the exception that mother advocates. That exception applies when the court finds, “a compelling reason . . . that termination would be detrimental to the child” because (1) “[t]he parents have maintained regular visitation and contact with the child[ren] *and* [(2)] the child[ren] would benefit from continuing the relationship.” (Italics added.) The parent bears the burden to overcome the statutory preference for adoption. To carry this burden, “the parent must prove he or she occupies a parental role in the child[ren]’s life resulting in a significant, positive emotional attachment of the child[ren] to the parent. [Citations.]” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234.)

However “[t]he juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

On appeal, “[w]e determine whether there is substantial evidence to support the court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] The reviewing court must affirm a trial court’s rejection of these exceptions if the ruling is supported by substantial evidence. [Citations.]” (*In re B.D., supra*, 159 Cal.App.4th at p. 1235.)

Here, mother failed to meet either prong of the exception to the legislatively preferred plan of adoption. As mother acknowledges, there are “significant gap[s]” in her contact with the children. Early in the dependency, mother’s visits were interrupted by her incarceration. Mother only regularly visited the children during four months in the summer of 2007.² Beginning in early September and for the next *nine months*, mother

² Mother asserts that she had regular visits every Wednesday for two hours “for a full six months.” However, the portion of the record to which she cites indicates that mother was arrested in April 2007 and was not released until May 2007 and she left

had *virtually no contact whatsoever* with Bentley and J. after she left California. Upon her return, she had only four, one-hour visits. In short, contact has been the exception rather than the rule. More important, mother's visits never progressed to the point where they were unsupervised. (Cf. *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1109 [parental-relationship exception inapplicable where, inter alia, no parent progressed beyond monitored visits].) There was thus abundant evidence from which the court could handily find, as it did, that mother "had ample opportunity to maintain regular visitation with her children when she was not incarcerated and she failed to do that. [¶] . . . If she wasn't confined, the history is that she wouldn't initiate her visits. . . ." For this reason, we held in our earlier opinion that "mother has not maintained regular contact with the children" even before the juvenile court suspended visits. That opinion is final and binding on mother.

Turning to the second prong of the exception, the court "balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child." (*In re B.D.*, *supra*, 159 Cal.App.4th at pp. 1234-1235.) This balance must be considered in the context of any limitations the juvenile court has placed on visitation. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538.) "If severing the existing parental relationship would deprive the child[ren] of 'a substantial, positive emotional attachment such that the child[ren] would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' " (*In re B.D.*, *supra*, at p. 1235, citing *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and

California after the visit on September 5, 2007. Furthermore, by her own admission, mother only recommenced visits on June 10, 2008. As of the time the children were detained, there was never a six-month stretch of time when she was in California and not incarcerated.

child, and the child's particular needs. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption. [Citation.]" (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.)

Mother must demonstrate more than "frequent and loving contact" (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418), or that she and the children find their contact pleasant. (*In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.) Mother had the obligation to show that the benefit to the children of their relationship outweighed the benefit the children would gain in a permanent home with an adoptive parent. (*In re Andrea R.*, *supra*, 75 Cal.App.4th at pp. 1108-1109.)

Here, a balancing of the factors militates toward adoption. These children are very young. J. lived with her mother for only one-half of her life, and Bentley for one-third of his. Their life with mother was tumultuous. More important, the evidence reveals that mother's contact with the children was neither frequent nor sufficiently pleasant such that completely severing contact with mother would be detrimental to the children. Until 2008, contact with mother, intermittent though it was, caused Bentley, a very angry child, to act out and ultimately be removed from half of his placements because he could not be controlled. Finally, his behavior had begun to stabilize in the seven months of his placement with this prospective adoptive family because the caregiver had assured he receive consistent therapy and regular medication. Both children are thriving and acclimating to their new home and family. Despite this hard-won battle, renewed visits with mother in the spring of 2008 caused Bentley's behavior to deteriorate. After each visit with mother, Bentley returned home upset and become self-destructive. Even J. showed signs of regression. Because of the apparent negative effect of interaction between parent and child, we cannot say that mother's relationship with these children constitutes " 'a substantial, positive emotional attachment such that the child[ren] would be greatly harmed' " by its severance. (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1235.)

Nor can we say that the relationship maintained during visits benefitted the children significantly enough to outweigh the strong preference for adoption. (*In re*

Jasmine D., *supra*, 78 Cal.App.4th at p. 1350.) Mother submitted no evidence that she occupied a parental role in the past 18 months such that mother and children share a significant, positive emotional attachment. Even if the children enjoyed the visits with mother in the spring of 2008, as some believe, that is not enough to rise to the level of a benefit that would significantly outweigh the benefit these young children derive from their stable, loving, nurturing home provided by the prospective adoptive family who is meeting all of the children's needs.

We are unpersuaded by mother's description of her last visits with the children as proof of a mutually loving relationship. While mother's behavior appears to have been appropriate and while the children were very affectionate with her, she overlooks the fact that the monitor observed that "[a] number of times when Bentley brought up his *foster mother* in a casual conversation, he referred to her as mom." (Italics added.) *In re Brandon C.*, *supra*, 71 Cal.App.4th 1530 and *In re Amber M.* (2002) 103 Cal.App.4th 681, upon which mother relies, are distinguished. Unlike here, in those cases the parents had regularly visited their children when allowed. (*In re Brandon C.*, *supra*, at p. 1533; *In re Amber M.*, *supra*, at p. 690.)

For the foregoing reasons, there was substantial evidence to support the juvenile court's determination that the parent-relationship exception to adoption did not apply in this case.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.